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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/016,945	12/14/2001	Kurt Albert Grassman	DE920000087US1	7397
7590 11/17/2004			EXAMINER	
Floyd A. Gonzalez IBM Corporation 2455 South Road, P386 Poughkeepsie, NY 12401			RAMPURIA, SATISH	
			ART UNIT	PAPER NUMBER
			2124	

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/016,945	Applicant(s) GRASSMAN ET AL. 	
	Examiner Satish S. Rampuria	Art Unit 2124	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to the application filed on 12/14/2001.
2. Claims 1-21 are pending.

Priority

3. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copies have been received on 12/14/2001.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1-7 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claims are non-statutory because they recite software components of updating the software, representing functional descriptive material without a computer readable medium or computer implemented, program per se are not tangibly embodied. Claims 1-7 thus amounts to only abstract idea and are nonstatutory.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Art Unit: 2124

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1, 3, 4, 8, 10, 11, 15, 17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,999,740 to Rowley (hereinafter called Rowley).

Per claim 1:

Rowley disclose:

- A method for updating programs (col. 1, line 28 “a software update mechanism”) to be used in a network (col. 1, line 33 “from the remote server”) comprising a plurality of first type computers (col. 2, lines “a number of client computer”) having a limited function range relative to a plurality of second type computers having a respective extended function range, a service being defined as comprising update services providing an updated facilities version to be performed by the second type computers to said first type computers (col. 2, lines 13-18 “the server has number of application directories one for each application...holds the new or amended application files for different versions of the application...”), the method comprising the steps of:
- selecting a first subgroup comprising at least one first type computer (col. 2, lines 1-2 “a computer network comprising a number of client computers”);
- selecting a second subgroup comprising at least one of the second type of computers (col. 2, lines 2-3 “a number of server computers”) for providing said updated facilities version exclusively to first type computers (col. 2, lines 12-18 “the server has a number of

application directories... holds... application files for different versions of the application”) until a predetermined condition has occurred (col. 2, lines 41-42 “flag which indicates access permissions of the file”); and

- loading at least one computer of the first subgroup with said updated facilities version (col. 3, lines 43-44 “upload a new or updated version of a software application onto the servers”) during continued operation of the unselected plurality of first type computers with a former version means (col. 4, lines 12-13 “uploader displays a list of the existing software applications, along with their version numbers”).

Per claim 3:

The rejection of claim 1 is incorporated, and further, Rowley disclose:

- distributing the updated facilities version among the second type of computers (col. 3, lines 42-43 “upload a new or updated version of a software application onto the servers”).

Although, Rowley teach provide the mechanism for updating the program/software. Rowley is silent on preventing computers from providing services as long as they are not equipped with the updated facilities version. However, this feature deemed to be inherent to the Rowley system, Rowley system shows updating only those which needed update without going through a full upload of the application, col. 4, lines 48-51. Rowley system would not function properly if the un-updated version were running with an updated version of application.

Per claim 4:

The rejection of claim 1 is incorporated, and further, Rowley disclose:

- which said first type of computers are embedded controllers (col. 2, lines 1-2 “a number of sever computers”) and the service of the second type computers comprising the provision of code loads to the first type of computers (col. 4, lines 8-9 “files server 102 stores a number of application files 104, forming a number of software applications”).

Claims 8, 10-11 are the apparatus claims corresponding to method claims 1, 3-4 respectively, and rejected under the same rational set forth in connection with the rejection of claims 1, 3-4 respectively, above.

Claims 15, 17-18 are the computer program product claims corresponding to method claims 1, 3-4 respectively, and rejected under the same rational set forth in connection with the rejection of claims 1, 3-4 respectively, above.

Substantially as claimed.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2, 9, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rowley in view of US Patent No. 6,701,356 to Conduct et al. (hereinafter called Conduct).

Per claim 2:

Rowley disclose:

- distributing said updated facilities version over the remaining plurality of unselected computers (col. 3, lines 42-43 “upload a new or updated version of a software application onto the servers”).

Rowley does not explicitly disclose testing at least one computer of the first subgroup with said updated facilities version during continued operation of the unselected plurality of first type computers and if a test result corresponds to a predetermined result scheme.

However, Condict discloses in an analogous computer system testing at least one computer of the first subgroup with said updated facilities version during continued operation of the unselected plurality of first type computers and if a test result corresponds to a predetermined result scheme (col. 9, lines 28-30 “verification testing... performed to verify the network is operation... testing is complete the new SPF images are ready”).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the method of testing the network operation for updated SPF images as taught by Condict into the method of updating the software/program as taught by Rowley. The modification would be obvious because of one of ordinary skill in the art would be motivated to test the updated version of software to ensure the proper operation of the software as suggested by Condict (col. 3, lines 38-50).

Claim 9 is the apparatus claim corresponding to method claim 2 and rejected under the same rational set forth in connection with the rejection of claim 2 above.

Claims 16 is the computer program product claim corresponding to method claim 2 and rejected under the same rationale set forth in connection with the rejection of claim 2 above.

10. Claim 5-7, 12-14, 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rowley in view of US Patent No. 6,480,901 to Weber et al. (hereinafter called Weber).

Per claim 5-7:

Rowley does not explicitly disclose updating programs in an enterprise network.

However, Weber discloses in an analogous computer system updating programs in an enterprise network (col. 4, lines 49-51 "communicate with all I/O devices on the enterprise, operations such as "firmware upgrades" may be performed en masse to common device types").

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the method of updating firmware on an enterprise network as taught by Weber into the method of updating the software/program as taught by Rowley. The modification would be obvious because one of ordinary skill in the art would be motivated to have updating program on the enterprise network to provide the updated to the devices connected via proxy devices as suggested by Weber (col. 2, lines 3-20).

Claims 12-14 are the apparatus claims corresponding to method claims 5-7 respectively, and rejected under the same rationale set forth in connection with the rejection of claims 5-7 respectively, above.

Claims 19-21 are the computer program product claims corresponding to method claims 5-7 respectively, and rejected under the same rationale set forth in connection with the rejection of claims 5-7 respectively, above.

Conclusion


11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Satish S. Rampuria** whose telephone number is **(571) 272-3732**. The examiner can normally be reached on **8:30 to 6:00 pm**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Kakali Chaki** can be reached on **(571) 272-3719**. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Satish S. Rampuria
Patent Examiner
Art Unit 2124
11/15/2004


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